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नई दिल्ली, जुलाई 6—जुलाई 12, 2003 शनिवार/आषाढ़ 15—आषाढ़ 21, 1925

No. 16]

NEW DELHI, JULY 6—JULY 12, 2003 SATURDAY/ASADHA 15—ASADHA 21, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 16 जून, 2003

आ. अ. 36.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 1/1999 (आर) में दिया गया झारखण्ड उच्च न्यायालय, रांची के तारीख 27-3-2003 का निर्णय/आदेश को प्रकाशित करता है।

(निर्णय/आदेश अंग्रेजी भाग में छपा है)

[सं. 82/झारखण्ड/(1/99)/2003]

आदेश से,

एस. के. कौरा, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 16th June, 2003

O. N. 36.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the

Election Commission hereby publishes Judgment/Order dated the 27-3-2003 of the High Court of Jharkhand, Ranchi in Election Petition No. 1 of 1999 (R).

Election Petition No. 1 of 1999 (R)

In the matter of a petition under Section 81 read with Section 100(1)(c) of the Representation of the People Act, 1951.

Pratima Goel

... Petitioner

Versus

Yashwant Sinha

... Respondent.

For the Petitioner : M/s. H.K. Lall and A.K. Lall, Advocates,

For the Respondent : M/s. V.P. Singh, Senior Advocate
A.K. Sinha & Sat Prakash,
Advocates.

PRESENT

THE HON'BLE MR. JUSTICE DEOKI NANDAN
PRASAD

This election petition has been filed for declaration that the election of Shri Yashwant Sinha to 13th Lok Sabha

from 48-Hazaribagh Parliamentary Constituency in the General Election 1999 be declared to be void.

2. Briefly stated the facts are as follows :—

The President of India called upon the electors of the 48 Hazaribagh Parliamentary Constituency to elect one member to the Lok Sabha in its 1999 General Election for constituting 13th Lok Sabha. The Collector of Hazaribagh district was appointed as Returning Officer and the following dates were prescribed by the Election Commission of India for holding the aforesaid election :—

- (a) Date for filing nomination : Between 21-8-99 to 28-8-99.
- (b) Date of scrutiny of nomination : 30-8-99.
- (c) Date for withdrawal, if any, of nomination : 1-9-99.
- (d) Date of polling, if necessary : 18-9-99.
- (e) Date for counting of votes : 6-10-99.
- (f) Date of declaration of result : 7-10-99.

3. The petitioner, respondent and some other candidates had filed their respective nomination before the Returning Officer within the prescribed dates and on scrutiny, the nomination of the respondent and other candidates the Returning Officer. The polling was held accordingly and counting of votes took place on the appointed dates. The respondent (Shri Yashwant Sinha) was declared to be elected to the 13th Lok Sabha from the 48-Hazaribagh Parliamentary Constituency. It is further stated that on 27-8-1999 at the time of filing nomination, the Assistant Returning Officer handed over a notice to the petitioner for filling up a proforma supported by an affidavit that the petitioner was not suffering from any disqualification as laid down in Section 8 of the Representation of People Act, 1951 (hereinafter referred to as "the Act"). The Petitioner was required to submit the document immediately and positively before 11 A.M. on 30-8-1999 (time and date fixed for scrutiny). After filing her nomination on 27-8-1999 the petitioner came back to her home at Ranchi and she decided to file the aforesaid form duly filled in and also the affidavit as required. On 30-8-1999 the petitioner's car broke down on its way from Ranchi to Hazaribagh near Ranchi Road Railway Station at Ramgarh and in spite of her best efforts, she could not reach Hazaribagh at the time of scrutiny. The Returning Officer by his Letter No. 362/Election dated 2-9-1999 informed the petitioner that her nomination was rejected on the ground of non-filing of the information and the affidavit. The aforesaid letter of the Returning Officer reads as under :—

पत्रांक 362/निर्वा.

“प्रेषक,

निर्वाची पदाधिकारी

48 हजारीबाग संसदीय क्षेत्र

सह उपायुक्त हजारीबाग।

सेवा में,

श्रीमती प्रतीमा गोयल

पति श्री एस.पी. गोयल

सुखदेवनगर, रातु रोड वार्ड नं. 4

पो. हेहल, रांची-834005

हजारीबाग, दिनांक 2-9-99

विषय : व्यय पंजली वापस करने के सम्बन्ध में।

महोदया,

उपर्युक्त विषयक संबंध में सूचित करना है कि आपने जो नाम निर्देशन पत्र 48 हजारीबाग संसदीय क्षेत्र हेतु दिया था उसे लोकप्रतिनिधित्व अधिनियम धारा 8 के अन्तर्गत अपेक्षित विवरणी एवं शपथ पत्र विधिवत् रूप से मौका देने के बाजवूद दाखिल नहीं करने के कारण आपका नाम निर्देशन पत्र रद्द कर दिया गया है।

अतः अनुरोध है कि पत्र प्राप्ति के एक सप्ताह के अन्दर व्यय पंजी अधोहस्ताक्षरी के कार्यालय में वापस करने की कृपा की जाए।

कृपया इसे अत्यावश्यक समझा जाए।

विश्वासभाजन

ह./- अस्पष्ट

निर्वाची पदाधिकारी

48 हजारीबाग संसदीय क्षेत्र

सह उपायुक्त, हजारीबाग”

4. It is stated that the affidavit is not an integral part of the prescribed nomination paper and, therefore, the order of the Returning Officer rejecting the nomination paper is illegal and contrary to the provision of Section 36 of the Act. The Returning Officer empowered to reject the nomination papers only on the grounds as mentioned under Section 36(2) of the Act. The petitioner is fully qualified to be chosen for the seat of Parliament and she has not been convicted for committing any offence and, therefore, the rejection of the nomination paper without having any basis is improper and contrary to the provision of the Act. Hence the election of the respondent be declared to be void.

5. Written statement has been filed on behalf of the sole respondent stating therein that the election petition is

wholly frivolous, uncalled for and vexatious in order to harass the respondent at the instance of some arch political rivals. The date of scrutiny of nomination was fixed on 30-8-1999 in terms of section 33 of the Act but the proforma for furnishing information under section 8 of the Act by any candidate to any election of Parliament duly supported by an affidavit was admittedly supplied to the petitioner on 27-8-1999 and the petitioner admittedly did not comply the same as the prescribed proforma could not be filled in. Section 8 of the Act is subject to superintendence, direction and control of Election Commission by virtue of Article 324 of the Constitution of India, which has overriding effect over the provisions of the Act. The petitioner had sufficient time to furnish information either personally or through any other persons or agents but information has not been given as required by the Returning Officer and, therefore, the nomination paper was rightly rejected by the Returning Officer as it was within the province of the Returning Officer to embark upon an enquiry in regard to the statements made by the petitioner and other candidates who had filed the nomination form in order to test and satisfy himself in regard to truth, genuineness and authenticity of the statements made therein. The petitioner has not stated as to what is the number and make of the Car by which she was travelling and what was the time she started from Ranchi to Hazaribagh on 30th August, 1999 and she has not stated as why she completely failed to neglected to attend the office of the Returning Officer on that day or on the following day and, therefore, the allegations of the petitioners are quite unfounded. The rejection of the nomination paper of the petitioner was proper and valid and, therefore, the election petition is fit to be dismissed with costs.

6. The following issues are settled for consideration in this election petition :—

- (1) Whether the present election petition is maintainable?
- (2) Whether the nomination paper of the petitioner was improperly rejected by the Returning Officer so as to materially affect the result of the respondent and thereby his election to 48 Hazaribagh Parliamentary Constituency has become void ?
- (3) Whether the affidavit required to be sworn by the candidate stating whether or not he has been convicted for committing any offence listed in section 8 of the Act, is an integral part of the prescribed nomination form to be filled by the candidates and whether non-filing of such affidavit attracts the mischief of section 36(2) of the act?
- (4) Whether the direction/ instruction issued by the Election Commission of India under Articles 324 of the Constitution of India as contained in annexure A to the written

statement requiring a candidate seeking election to Parliament to swear affidavit stating whether or not he has been convicted for committing any of the offence mentioned under section 8 of the Act has force of law ?

- (5) To what relief or reliefs the election petitioner is entitled to ?

7. An additional issue has also been framed by order dated 13-4-2001, which reads as under :—

“4(A).—Whether the election petition is entertainable as the petitioner not being a duly nominated candidate lacks *locus standi*?”

FINDINGS

8. **Issue No. (1).** This issue has already been decided by order dated 13-4-2001 on the basis of an application under Order VII Rule 11 of the Code of Civil Procedure read with Sections 81 and 86 of the Act filed on behalf of the respondent and it was held that the application is maintainable of which the respondent also preferred S.L.P. against the said order which was dismissed by the Apex Court by order dated 25-1-2002.

9. **Issue Nos. (2), (3) and (4) :—**All the above issues have been taken up together for consideration as they are related with each other.

10. At the Very outset it may be noted that admittedly the nomination of the petitioner was rejected by the Returning Officer and that fact was also communicated to the petitioner by registered Letter No. 362/Election dated 2-9-1999. It is also an admitted position that on 27-8-1999 at the time of filing nomination paper by the petitioner, a notice was handed over to the petitioner requiring her to file a proforma supported by a duly sworn affidavit that she was not suffering from any disqualification for committing any offence specified in section 8 of the Act. The petitioner was to submit the said proforma supported by an affidavit positively before 11 A.M. on 3-8-1999, the date of scrutiny of nomination but the petitioner failed to submit the proforma along with affidavit as required till 30-8-1999 resulting rejection of nomination paper.

11. It is also an admitted fact that not a single witness has been examined on behalf of the petitioner as well as the petitioner herself has not appeared for her examination in the Court.

12. On the other hand, the respondent examined as many as nine witnesses on the point. W. 1 (Dhan Kumar Jain) claimed in his evidence that he had worked as an election agent on behalf of Sri Yashwant Sinha in Parliamentary Election, 1999 from Hazaribagh Parliamentary Constituency and he was present at the time of scrutiny of nomination paper. According to him, at the time of scrutiny of the nomination paper, the petitioner's name was called for but neither the petitioner appeared nor on her behalf anybody else appeared at the relevant time. There could

be no effect of the result of election of Sri Yashwant Sinha even if Smt. Pratima Goel (the petitioner) could have been a candidate from that constituency. He has stated in his cross-examination in clear term that he could know the petitioner only after filing nomination paper. D.W. 2 (Sri Prahlad Sinha) has stated that he was a voter in the Hazaribagh Parliamentary Constituency in the year 1999 and he has not heard the name of Smt. Pratima Goel, the petitioner during the election period either as a social worker or a famous personality. He has stated in his cross-examination that he had worked since 1984 and he had worked in Barhi Assembly Constituency. D.W. 3 (Shailendra Kumar) also stated that he was not knowing the petitioner before filing the nomination paper. D.W. 4 (Ranjit Kumar Sinha) also stated that the petitioner was not known in the area. D.W. 5 (Manoj Singh) claimed in his evidence that he was not knowing Smt. Pratima Goel, the petitioner, from before. He claimed to be a worker of the Bhartiya Janta Party (in short "B.J.P.") and also worked in the election on behalf of the B.J.P. D.W. 6 (Rajesh Gupta) stated that he has not heard the name of Pratima Goel as worker or politician in the area. He claimed to have worked for B.J.P. in the said election. D.W. 7 (Sheo Shankar Banerjee) stated that he was a worker of B.J.P. and since 1985 he was knowing Mr. Yashwant Sinha. He has further stated that he has not heard the name of Smt. Pratima Goel as being a social worker or a politician in the area. D.W. 8 (Banshidhar Prasad) has also stated in the same way that he was not knowing the petitioner as a social worker. D.W. 9 (Sunil Singh) claimed in his evidence that he was also not knowing Smt. Pratima Goel as being social worker or politician in the area.

13. From perusal of the nomination paper of the petitioner (Smt. Pratima Goel) (Ext. 1), it is apparent that the petitioner Pratima Goel admittedly was absent at the time of scrutiny on 30-8-1999. The order passed by the Returning Officer rejecting the nomination paper is as follows :—

- "1. Adjourned till 12.10 P.M.
2. Neither the candidate nor her agent or proposer present in the scrutiny hall.
3. She is being given another opportunity to the file affidavit and present other document to support that she is not disqualified in terms of Section 8 of the Representation of the People Act, 1951.

Signed on 30-8-99

At 12.10 P.M. In spite of time being given, no one appeared—the candidate, agent or a proposer—to file an affidavit and information as is required to furnish as per Section 8 of the P.R. Act. This amounts to willful defiance and refusal to file the affidavit, hence, the nomination is rejected.

Signed.

Earlier too she was given written intimation to furnish the same vide memo No. 308 dated

27-8-1999 at the time of filing of nomination—the notice was duly received by the candidate".

14. This fact was already admitted by the petitioner about the receipt of notice on 27-8-1999 for furnishing required proforma duly filled in supported by affidavit.

15. The petitioner took a plea in her election petition that on 30-8-1999 her car broke down on its way from Ranchi to Hazaribagh near Ranchi Road Railway Station at Ramgarh and in spite of her best efforts she could not reach Hazaribagh at the time of scrutiny and she was prevented by filing the aforesaid papers before the Returning Officer at Hazaribagh.

16. I have already discussed above that neither the petitioner has come forward to support the said pleadings as claimed nor any witness on her behalf has been examined on this score to substantiate the said story. Neither any number of the said Car has been given in the pleadings nor specific time has been assigned about the circumstance preventing her from reaching the scrutiny hall at the relevant time. From the rejection order (Ext. 1) it is apparent that the petitioner was given ample opportunity for filing the requisite information by way of proforma and the affidavit but even then she failed to give such information and even her agent or proposer could not appear before the Returning Officer at the time of scrutiny showing willful defiance and refusal to file the affidavit.

17. In the case of Shaligram Shrivastava Vs. Naresh Singh Patel (2003 AIR SCW 144) the Apex Court while considering the similar matter held that :

"At the time of scrutiny the Returning Officer is entitled to satisfy himself that a candidate is qualified and not disqualified. Sub-section (2) of S. 36 authorises him to hold an enquiry on his own motions, though summary in nature. The Returning Officer furnished a proforma to the candidates to be filled on affidavit and filed on or before the date and time fixed for scrutiny of the nomination paper. Therefore providing a proforma, eliciting necessary and relevant information in the light of S. 8 of the Act to enquire as to whether the person is qualified and not disqualified, is an act or function fully covered under Sub-section (2) of S. 36 of the Act. The Returning Officer is authorized to seek such information to be furnished at the time or before scrutiny. If the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, is obviously avoiding a statutory enquiry being conducted by the Returning Officer under Sub-section (2) of S. 36 of the Act relating to his being not qualified or disqualified in the light of S. 8 of the Act. It is bound to result in defect of a substantial character in the nomination".

18. In the instant case the petitioner was duly noticed by giving proforma and she was required to furnish the

said proforma with affidavit by 30-8-1999 before scrutiny and she (the petitioner) apparently failed to furnish the information as required by the Returning Officer and, as such, the nomination paper certainly be rendered suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the nomination.

19. Section 36(2) of the Act reads as under :—

“(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination of any of the following grounds :

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :

Articles 84, 102, 173 and 191.

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine”.

20. The petitioner was given opportunity for filing a proforma supported by affidavit and sufficient time was also allowed and finally the order was passed at 12.10 P.M. when neither the petitioner nor any agent or proposer was present at the time of scrutiny and such act adopted by the Returning Officer would amount to be a summary enquiry done by the Returning Officer at the relevant time. It is one of the statutory duties of the Returning Officer to scrutinize the nomination paper in the light of Section 8 of the act and he is statutorily authorized to hold a summary enquiry about the qualification and disqualification of the candidate.

21. It is also clear that the Election Commission of India issued a letter dated 6th January, 1988 (Annexure A to the written statement) for furnishing the requisite information in the form of affidavit to the Returning Officer before the commencement of the scrutiny of the nomination. There was clear instruction that a copy of proforma should be attached to each form of nomination paper supplied to an intending candidate so that the candidate furnishes that information along with nomination paper. Accordingly, a proforma was already handed over to the petitioner on 27-8-1999 requiring the information with affidavit, which has never been filed to the Returning Officer.

22. In the case of Mathura Prasad Vs. Ajeem Khan (AIR 1990 Supreme Court 2274), the Supreme Court held in

similar way that though the candidate was not identified as per electoral roll and neither candidate nor any representative on his behalf were ready to assist the Returning Officer in curing defect and in providing the correct identity of the candidate and in fact they did not remain present when the nomination paper was taken up for scrutiny, it cannot be said that the Returning Officer committed any error in rejecting the nomination paper of the candidate.

23. Obviously the nomination paper which filed by the petitioner cannot be said to be complete when the information as required by the Returning Officer in the light of section 8 of the Act has not been supplied and, therefore, the nomination paper suffers from inherent defect. In this way, it cannot be held that the Returning Officer committed any error in rejecting the nomination paper of the petitioner.

24. As discussed above, the circumstances as claimed by the petitioner for not attending the scrutiny hall at the time of scrutiny has also not been corroborated by any type of evidence and, therefore, it can safely be held that the nomination paper of the petitioner was properly rejected by the Returning Officer.

25. Mr. Lall, learned counsel appearing on behalf of the petitioner vehemently argued that though the Election Commission of India has got the power of superintendence, direction and control of the preparation of electoral rolls but the said direction of the Election Commission cannot override the provisions of the Act and, therefore, the Returning Officer cannot reject the nomination paper only because of non-submission of information as the Returning Officer can only reject the nomination paper under section 36(2) of the Act and there is no such provision enunciated in section 36 of the Act for furnishing such information along with affidavit. Moreover, non-submission of the said information cannot be said to be of substantial character. It is further argued that by rejecting the nomination paper of the petitioner, the Returning Officer already held the petitioner to be a convicted person under section 8 of the Act whereas no any document has come forward to indicate that the petitioner has been convicted for any offence and, therefore, the rejection of nomination paper of the petitioner by the Returning Officer on the ground of non-submission of affidavit is beyond the purview of section 36 of the Act. It is further argued that the affidavit in question is not an integral part of the prescribed nomination paper and, as such, the rejection of nomination paper of the petitioner is highly improper which has materially affected the result of the election of the respondent as well as the direction/instruction issued by the Election Commission of India under Article 324 of the Constitution of India has got no force of law and, therefore, the Returning Officer committed error and the nomination paper of the petitioner was improperly rejected.

26. The counsel for the petitioner also relied upon the cases of Dr. P. Nalla Thiampy Terah Vs. Union of India

and others (AIR 1985 Supreme Court 1133), Ms. Krishna Mohini Vs. Mohinder Nath Sofat (AIR 2000 Supreme Court 317), Subhash Desai Vs. Sharad J. Rao and others (AIR 1994 Supreme Court 2277) and A.C. Jose Vs. Sivan Pillai (AIR 1984 Supreme Court 921).

27. At the time of scrutiny of nomination paper, the Returning Officer is entitled to satisfy himself that a candidate is qualified and not disqualified. In order to be satisfied the Returning Officer has duly been authorized under Sub-section 2 of Section 36 of the Act to hold an enquiry on his own motion though summary in nature and if defect is found in the nomination paper, the Returning Officer can reject the nomination as provided under sub-section (2) of Section 36 of the Act. Admittedly, the petitioner failed to assign any reason for non-submission of the proforma supported with an affidavit on the day of scrutiny though the petitioner was given sufficient time for furnishing the same but neither the petitioner nor her agent or proposer was present at the time of scrutiny.

28. Articles 324(1) of the Constitution of India reads as under :—

“Superintendence, direction and control of elections to be vested in the Election Commissioner.

- (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).”

29. The words “superintendence, direction and control” have a wide connotation so as to include therein such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the elections to their completion.

30. The Election Commission has ample power under article 324(1) of the Constitution to make appropriate orders as to the conduct of election and it can make appropriate orders as required during the entire course of election. The letter dated 6-1-1998 (Annexure a) issued by the Election Commission of India indicating to the Returning Officer for handing over the proforma to the candidate to enable him to furnish the requisite information in the form of affidavit before the commencement of the scrutiny of nominations and in compliance of the same, the notice having proforma was handed over to the petitioner admittedly on 27-8-1999 in the light of section 8 of the R.P. Act which has never been complied with by the petitioner and, as such, the nomination paper cannot be said to be complete rather it was defective in absence of the said information.

31. In the case of A.C Jose (Supra) it has been laid down by the Apex Court as regards the legal and constitutional position regarding conduct of election which are as follows :

- “(a) when there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections,
- (b) where there is an act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and rules) in the matter of superintendence. Direction and control as provided by Art. 324,
- (c) where the Act or the Rules are silent, the Commission has no doubt plenary powers under Art. 324 to give any direction in respect of the conduct of election, and
- (d) where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open to the Commission to go ahead with implementation of it at its own sweet will even if the approval of the Government is not given”.

32. Clause (c) clearly deals with about the power of the Commission to give any direction in respect of the conduct of election, where the Act or the Rules are silent. Even if there is no specific provision under sub-section (2) of section 36 of the Act and if it is silent to this effect, the Returning Officer has plenary power to give such direction for submission of proforma supported by affidavit. Moreover nine witnesses have been examined on behalf of the respondent and they have consistently deposed that the petitioner is not known in the constituency and so the question of the result of the respondent materially affected does not arise. No any cogent evidence has been adduced on behalf of the petitioner to show that the nomination paper of the petitioner was rejected improperly and she has not avoided to attend the place of scrutiny purposely.

33. Apparently the Returning Officer is authorized to conduct enquiry for rejection of nomination in absence of proforma though summary in nature and even there is no specific enunciation under Sub-section (2) of section 36 of the Act about attaching proforma supported with affidavit, the Returning Officer is entitled to satisfy himself by obtaining information in such proforma with affidavit in the light of Section 8 of the Act and non-submission of such information certainly rendered the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting such nomination paper. Though the affidavit in question is not an integral part of the prescribed nomination paper but the Returning Officer for being satisfied can obtain the information

in the light of Section 8 of the Act. Thus there is no substance in the submission of the learned counsel for the petitioner. It is true that returning Officer should not reject the nomination paper merely on a mistake of technical or formal nature and he should also give an opportunity to the candidate or his representative at the time of scrutiny to remove the defect, but as discussed above, neither the petitioner nor her representative was present at the time of scrutiny though sufficient time was given for removing defect proving wilful defiance and refusal for removing defect as she avoided to attend the place of scrutiny with full knowledge and that will go against her plea. The facts of the cases relied upon by the learned counsel for the petitioner are also distinguishable from the facts of the instant case and there appears no relevancy of the decisions cited and relied by the learned advocate for the election petitioner rather the law settled by the Apex Court in the case of Saligram Srivasta (Supra) squarely covers with the instant case. In that case also, the nomination was rejected because the candidate failed to fill the proforma prescribed by the Election Commission eliciting necessary and relevant information in the light of section 8 of the Act and the candidate also failed to be present personally or through his representative at the time of scrutiny of nomination.

34. Having regard to the above facts and circumstances coupled with the evidence on record, it is evident that the Returning Officer was fully justified in rejecting the nomination paper of the petitioner who failed to furnish information as sought on the proforma given to her and had also failed to be present personally or through her representative at the time of scrutiny. Thus rejection was proper. Accordingly, all the three issues are answered.

35. Issue No. 4 (A) : It is evident that at the very beginning, a preliminary question was raised about the maintainability/entertainability of the election petition, which has already been decided by order dated 13-4-2001. Obviously the petitioner being an aggrieved person due to rejection of her nomination by the Returning Officer and, therefore, her election petition can be said to be entertainable and she has got the locus standi to file the election petition against the order of rejection. Since the matter has already been dealt with in detail by order dated 13-4-2001, this election petition can be said to be entertainable.

36. Issue No. 5 : Taking into consideration the entire facts of the case and evidence discussed here in above, I find that the election petitioner is not entitled to get any relief. Hence, the election petition is dismissed. However, in the circumstances of the case, there is no order as to costs.

Sd/

Deoki Nandan Prasad

Jharkhand High Court,
Ranchi
The 27th March, 2003
AKS/AFR

[No. 82/JKD/(1/99)/2003]

By Order,
S.K KAURA, Secy.

शुद्धि पत्र

नई दिल्ली, 23 जून, 2003

आ. अ. 37.— भारत निर्वाचन आयोग की तारीख 7 मार्च, 2003 की आदेश संख्या 76/उ.प्र.-वि.स./2002 के साथ संलग्न सारणी के स्तम्भ 1 से 5 में क्रम संख्या 120 में विनिर्दिष्ट शब्द एवं अंकों को हटा दिया जाये। इसके बाद की प्रविष्टियों की क्रम संख्या स्वतः ही परिवर्तित मानी जायेगी।

[सं. 76/उ.प्र.-वि.स./2002]

आदेश से,

आनन्द कुमार, प्रधान सचिव-सह-निदेशक (प्रशासन)

CORRIGENDUM

New Delhi, the 23rd June, 2003

O. N. 37.—In the table appended to the Election Commission of India's order No. 76/UP-LA/2002, dated 7th March, 2003 the words and figures in Column Nos. 1 to 5 against Serial No. 120 may be omitted. Subsequent entries shall deemed to have been altered accordingly.

[No. 76/UP-LA/2002]

By Order,

ANAND KUMAR, Principal Secy.-Cum-Director
(Admn.)

शुद्धि पत्र

नई दिल्ली, 27 जून, 2003

आ. अ. 38.— भारत निर्वाचन आयोग की तारीख 7 अप्रैल, 2003 की आदेश संख्या 76/उ.प्र.-वि.स./2002 के साथ संलग्न सारणी के स्तम्भ 1 से 5 में क्रम संख्या 53 में विनिर्दिष्ट शब्द एवं अंकों को हटा दिया जाये। इसके बाद की प्रविष्टियों की क्रम संख्या स्वतः ही परिवर्तित मानी जायेगी।

[सं. 76/उ.प्र.-वि.स./2002]

आदेश से,

आनन्द कुमार, प्रधान सचिव-सह-निदेशक (प्रशासन)

CORRIGENDUM

New Delhi, the 27th June, 2003

O. N. 38.—In the table appended to the Election Commission of India's order No. 76/UP-LA/2002, dated 7th April, 2003 the words and figures in Column Nos. 1 to 5 against Serial No. 53 may be omitted. Subsequent entries shall deemed to have been altered accordingly.

[No. 76/UP-LA/2002]

By Order,

ANAND KUMAR, Principal Secy.-Cum Director
(Admn.)